



## **UTE INDIAN TRIBE**

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### **Testimony of the Ute Indian Tribe of the Uintah and Ouray Reservation**

#### **United States House of Representatives Committee on Natural Resources Subcommittee for Indigenous Peoples of the United States**

#### **Hearing on Examining Federal Facilities in Indian Country**

**June 30, 2021**

Chairwoman Leger Fernandez, Ranking Member Young, and Members of the Subcommittee for Indigenous Peoples of the United States, thank you for the opportunity to submit testimony in response to your June 17, 2021, hearing entitled “Examining Federal Facilities in Indian Country.” The Ute Indian Tribe supports your examination of chronic underfunding of federal facilities in Indian Country.

Our Uintah and Ouray Reservation covers about 4.5 million acres, making it the second-largest reservation in the United States. Our Reservation is larger than the State of Connecticut and we need well-funded, functional and modern facilities to provide for our members and maintain the health and welfare of our communities. As you know, the Federal government is required to provide these facilities.

Like other tribes that testified during the hearing, the Ute Indian Tribe was forced to take extraordinary measures just to provide basic law enforcement and justice services on our Reservation. After the Bureau of Indian Affairs (BIA) condemned our BIA jail, we spent more than a decade on BIA’s facilities replacement list. With no hope in sight, we were forced to use our own tribal revenues to design and construct a new Tribal Justice Center. Of course, the design, construction and maintenance of these facilities is the responsibility of the United States.

Just as important, the Federal government’s responsibilities do not end with the construction of a facility. The Federal government is responsible for providing adequate funding to fully staff and operate the Justice Center to meet the law enforcement needs of our Reservation. However, once again, after years of negotiations, the Federal government and the BIA have not

provided the funding or resources necessary to staff the Justice Center to meet law enforcement needs on our Reservation.

### **Tribal Justice Center**

In 2006, BIA condemned its lone detention center on our Reservation. When our facility was closed, BIA committed to replacing it as soon as possible, and BIA placed the facility at the top of its law enforcement replacement priority list. BIA went so far as to complete a pre-planning study for a new facility with the Tribe. However, by the time the pre-planning study was completed, BIA had stopped funding law enforcement facilities construction, including detention centers and tribal courts.

After more than a decade on the BIA's facility replacement waitlist, and without a detention center, the Tribe took matters into its own hands. In close consultation with BIA's Office of Facilities Management and Construction, relevant Congressional Committees, and federal health, safety, and space utilization standards, the Tribe decided to use tribal funds to construct a new Tribal Justice Center.

In 2017, the Tribe opened its new \$38 million Tribal Justice Center. Construction of the facility was completed with only tribal funds. The facility includes over 105,000 square feet of space, spans over 15 acres, and includes 60 adult short/long term beds, 40 juvenile beds, and houses our tribal courts. The Justice Center meets all BIA and United States Department of Justice standards and program requirements to protect staff and persons incarcerated at the facility.

However, facilities construction is only half the story. Once these facilities are constructed, BIA still needs to provide the funding to staff and operate facilities to meet tribal needs. The chronic underfunding of the services that BIA provides Indian tribes is a national disgrace. Congress must take action to fulfill these important treaty and trust responsibilities. These agreements between the Federal government and Indian tribes were critical to the foundation and success of the United States.

### **Staffing and Operating our Tribal Justice Center**

The Bureau of Indian Affairs Office of Justice Services (BIA-OJS) administers law enforcement services for the Tribe as a direct service function. BIA-OJS was directly involved over a three-year period in the development and completion of the new Tribal Justice Center. However, now that the Justice Center is constructed and ready to operate, BIA-OJS still has not sought or provided the federal funding to fully staff and operate the Justice Center.

BIA-OJS provides just 5 full-time correction officers to run a 100-bed detention facility. This is unacceptable. BIA-OJS advises us that it needs a total of \$4,844,000 to fully operate our detention center at federally mandated standards. This includes \$2,675,464 for the adult wing and \$2,169,422 for the juvenile section.

Even worse, until the Justice Center is fully staffed, BIA is forced to use federal funds to house many detainees in county jails. We have adequate space in our Justice Facility to take violent offenders, drug dealers, and individuals with outstanding warrants off our streets. Yet, every two weeks, BIA-OJS uses federal funds to send 30 or more adults to county detention facilities under a separate outsourcing contract with the county.

BIA's failure to adequately staff the Justice Center has also resulted in a situation in which our tribal judges are forced to release one prisoner to detain another. BIA law enforcement has told tribal judges that warrant enforcement must slow down because the United States cannot afford to house these offenders in county jails.

The lack of funding for these programs is also undercutting Congressional intent. We cannot enforce the Violence Against Women Act and the jurisdictional provisions of the Tribal Law and Order Act if our federal partners do not take adequate steps to ensure these staffing issues are addressed.

In anticipation of staffing shortages, the Tribe and BIA previously entered into a Memorandum of Understanding (MOU) under the authority of the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804(e), to ensure that maintenance and ongoing operations would be funded for the Justice Center. Under the MOU, the Tribe funds various law enforcement officers who supplement existing BIA law enforcement services. Under the MOU, the Tribe has historically funded more than 50 percent of on-reservation law enforcement operations. The purpose of the MOU was to provide "stop-gap" funding to cover these operations and management costs while the Tribe's Indian Self-Determination and Education Assistance Act, P.L. 93-638, funding contract was finalized and approved by BIA. This contract was never fulfilled.

In addition, while tribal courts have operated in BIA-funded buildings for more than 50 years, in the last ten years, the Office of Management and Budget (OMB) determined that the construction, operation, and maintenance of tribal courts is a tribal responsibility. OMB did this without any congressional action and no tribal consultation. Tribal court programs are primarily funded under Indian Self-Determination and Education Assistance Act contracts, also known as "638 Contracts." OMB did not take into account that a 638 Contract can be retroceded by a tribe to the Federal government at any time. As a result, there is no question that these are federal responsibilities.

### **Bureau of Indian Affairs Leasing Authority**

BIA-OJS needs its own justice center leasing authority to fully staff our Justice Facility. During the hearing, the Assistant Secretary for Indian Affairs' Deputy Assistant Secretary for Management, Jason Freihage, testified before the Subcommittee that BIA only has the leasing authority under P.L. 93-638, section 105(l) of the Indian Self-Determination and Education Assistance Act and, currently, this leasing and funding authority is limited to education and healthcare contracted or compacted services, not direct services that BIA-OJS provides.

BIA-OJS needs this authority to provide tribes with the option to use their own funds to speed the replacement of law enforcement facilities and save federal dollars. Under this authority tribes would be able to construct, with private funds, a law enforcement, detention, or tribal court building, with the assurance that the Department of the Interior and BIA will make every effort to request the funds necessary to lease, staff, operate and maintain that building after it is constructed. We did this through constant consultation with BIA-OJS, but now without independent leasing authority we are unable to fully staff and operate our Tribal Justice Center.

### **Conclusion**

Much remains to be done to improve federal facilities in Indian Country. When tribes take the initiative to build and fund their own facilities according to federal standards, our federal partners, in particular BIA, needs Congress to provide adequate funding and leasing authority to support us and ensure the proper operation of these facilities. Thank you for the opportunity to submit this testimony and for your support.